

Approved for tabling. Paul

PARLIAMENT OF KENYA

SNA
16/10/18



16 OCT 2018
PAPER LAID

Paper laid on the Table of the House by the Chairperson of the Departmental Committee on Administration and National Security [Hon. Paul Koinange, M.P.] on Tuesday, 16th October 2018.

THE NATIONAL ASSEMBLY

12TH PARLIAMENT – SECOND SESSION – 2018

PARLIAMENT OF KENYA LIBRARY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON THE COUNTY GOVERNMENT (AMMENDMENT) NO.2 BILL (SENATE BILL NO. 7 OF 2017)

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

OCTOBER 2018

•
•
•
•
•
•
•
•

02

CONTENTS

CHAIRPERSON'S FOREWORD	0
EXECUTIVE SUMMARY	2
1.0 PREFACE	4
1.1 Establishment and mandate of the Committee	4
1.2 Committee Membership	6
3.0 BACKGROUND	7
3.1 Public access and participation.....	9
3.2 Communication and committal to committee.....	11
3.4 Committee proceedings	11
3.5 SUMMARY OF THE COUNTY GOVERNMENT (AMENDMENT) BILL (No.2), SENATE BILL NO. 7 OF 2017	12
3.6 Submission from the Council of Governors (CoG).....	14
4.0 COMMITTEE OBSERVATION	15
5.0 COMMITTEE RECOMMENDATIONS.....	18



CHAIRPERSON'S FOREWORD

Hon. Speaker,

The Bill was read for the first time on Tuesday 24th July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1), it is on this basis that the Committee makes this Report. The Committee received submissions from stakeholders before the adoption of this report.

The Bill seeks to amend the County Governments Act, No. 17 of 2012 to provide for the procedure for the disposal of a report of a commission of inquiry that may be established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution; and for connected purposes.

Further, Standing Order 127(3) provides that “the Departmental Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes a report to the House”

The Clerk of the National Assembly published an advertisement on print media inviting the public to present submissions and memoranda on the County Governments (Amendment) Bill No. 2 (Senate Bill No. 7 of 2017) The submissions/memoranda were to be received on or before Thursday 2nd August, 2018 at 5:00 pm.

The Committee received submissions from the Ministry of Devolution and ASAL, the Council of Governors (COG) and the Office of the Attorney General.

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the Bill.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100


1

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

I also take this opportunity on behalf of the Committee to thank the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee during the deliberations of the Bill. Further, the Committee wishes to thank all the stakeholders for their input of the Bill.

On behalf of the Committee and pursuant to the provisions of Standing Order 199(6) it is my pleasant duty to table the Report of the Departmental Committee on Administration and National Security on the County Governments (Amendment) Bill No. 2 (Senate Bill No. 7 of 2017)

SIGNED.....

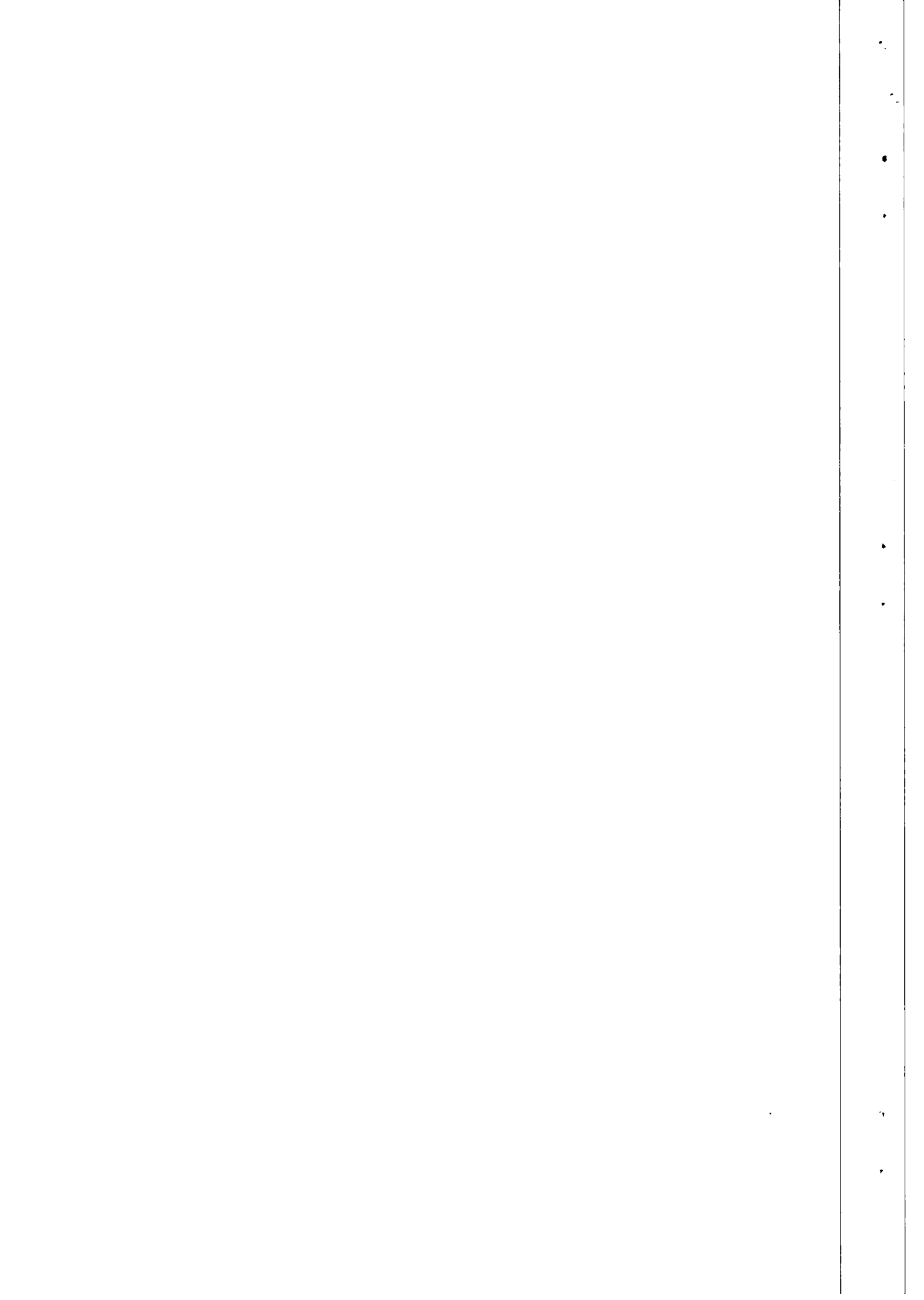


(HON. PAUL KOINANGE, MP)

(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL
SECURITY

DATE..... 16th October 2018



EXECUTIVE SUMMARY

This report contains the Committee's proceedings during the consideration of the County Governments (Amendment) Bill No. 2 (Senate Bill No. 7 of 2017). The Bill was read the first time on Tuesday 24th July 2018.-

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the County Governments (Amendment) No. 2 Bill, (Senate Bill No. 7 of 2017). The submissions/memoranda were to be received on or before Thursday 2nd August, 2018 at 5:00 pm.

The Committee considered the County Governments Amendment No. 2 Senate Bill No.7 of 2017 on Tuesday 7th August, 2018, Tuesday 9th October, 2018 and adopted the report on Thursday 11th October, 2018.

The Committee having considered the County Governments (Amendment) Bill No. 2 (Senate Bill No. 7 of 2017 will be proposing amendments in—

CLAUSE 2

In the proposed amendments to section 123—

(a) by deleting the proposed subsection **(8)** and substituting with the following new subsection—

“(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.”



(b) in the proposed **subsection (9)** by deleting the words “whether or not” appearing in paragraph (a) and substituting therefor the word “that”.

(c) by **inserting a new subsection** immediately after the proposed subsection (9)—

“(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.”

(d) in the proposed subsection **(13)** by—

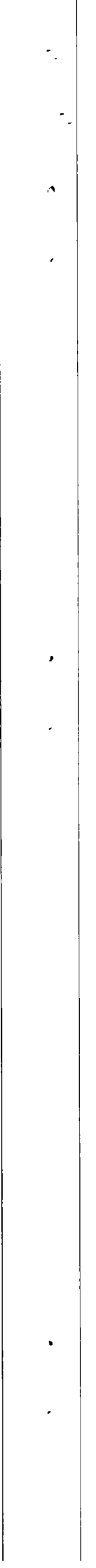
(i) deleting the word “authorization” immediately after the word “upon” and substituting therefor the word “approval”; and

(ii) inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”.

(e) by deleting the proposed **subsection (14)**.

CLAUSE 3

Clause 3 of the Bill to be amended by renumbering the last provision under the proposed **New Section 129** as subsection (8) instead of subsection (4).

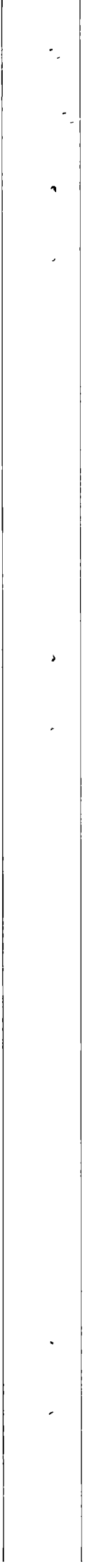


1.0 PREFACE

1.1 Establishment and mandate of the Committee

The Departmental Committee on Administration and National Security is established under *Standing Order 216* with the mandate to:

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) **study and review all the legislation referred to it;**
- d) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- g) examine treaties, agreements and conventions;
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and



- j) examine any questions raised by Members on a matter within its mandate.

In executing its mandate, the Committee oversees the following Ministries and Departments:

- i) The Ministry of Interior & Coordination of National Government-
 - a) State Department of Interior;
 - b) State Department of Border Control, Immigration and Registration of Persons; and
 - c) State Department of Correctional Services.
- ii) The National Police Service Commission;
- iii) The Independent Policing Oversight Authority; and
- iv) The Public Service Commission.

In Accordance with the Schedule II of the Standing Orders, the Committee is mandated to oversight the—

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service;
- vi) Prisons; and
- vii) Immigration.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

1.2 Committee Membership

The Committee comprises of the following members;

1. Hon. Paul Koinange, MP - (Chairperson)
2. Hon. John Waluke, MP - (Vice-Chairperson)
3. Hon. Athanas Wamunyinyi, MP
4. Hon. Justus Kizito, MP
5. Hon. Makali Mulu, MP
6. Hon. Aduma Owuor, MP
7. Hon. Didmus Wekesa Barasa Mutua, MP
8. Hon. Geoffrey Kingagi Muturi, MP
9. Hon. Marselino Malimo Arbelle, MP
10. Hon. Tecla Chebet Tum, MP
11. Hon. Josphat Kabinga Wachira, MP
12. Hon. Nimrod Mbithuka Mbai, MP
13. Hon. George Theuri, MP
14. Hon. Martin Deric Ngunjiri Wambugu, MP
15. Hon. Abdi Omar Shurie, MP
16. Hon. Halima Mucheke, MP
17. Hon. Peter Francis Masara, MP
18. Hon. Ahmed Kolosh Mohammed, MP
19. Hon. Edward Oku Kaunya, MP

1.3 Committee Secretariat

1. Mr. Abdullahi Aden - Senior Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant III
3. Ms. Clarah Kimeli - Senior Legal Counsel
4. Mr. Edison Odhiambo - Fiscal Analyst III
5. Mr. Donald Manyala - Research Officer III

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

3.0 BACKGROUND

The County Governments (Amendment) Bill No. 2, (Senate Bill No. 7 of 2017) was read for the first time on Tuesday 24th July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1) and report to the House.

The object of the bill is to amend the County Government Act to provide for the procedure for the disposal of a report of a commission of inquiry established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution; and for connected purposes.

Article 109 of the Constitution provides that Parliament shall exercise its legislative power through Bills passed by the House and assented to by the President.

Existing procedure for dissolution of a county Government

(a) The Constitution

Article 192(1) of the constitution provides that the President may suspend a county government—

(a) in an emergency arising out of internal conflict or war; or

(b) in any other exceptional circumstances.

(2) A county government shall not be suspended under clause (1)(b) unless an independent commission of inquiry has investigated allegations

.....

against the county government, the President is satisfied that the allegations are justified and the Senate has authorised the suspension.

(3) During a suspension under this Article, arrangements shall be made for the performance of the functions of a county government in accordance with an Act of Parliament.

(4) The Senate may at any time terminate the suspension.

(5) A suspension under this Article shall not extend beyond a period of ninety days.

(6) On the expiry of the period provided for under clause (5) elections for the relevant county government shall be held.

(b) The County Governments Act, No.17 of 2012

(a) Section 123 of the Act provides for those exceptional circumstances to be through a petition to the President in instances where a county government engages against the common needs and interest of common citizens.

(b) Section 123(2) requires the petition to be supported by at least signatures of 10% registered voters of the County.

(c) 123(3) Upon receiving the petition the President submits the same to the apex Intergovernmental body which then submits an approval to the president.

(d) The President thereafter appoints a Commission with the approval of the apex 123(4).

(e) 123(5) provides for composition of the Commission.

(f) 123(7) the Commission makes recommendations to the President.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

- (g) 123(8) the President if satisfied on recommendations for a suspension forwards the report to the Speaker of the Senate.
- (h) 123(9) the Senate considers the report and makes a resolution accordingly.
- (i) Where the Senate adopts a recommendation for an approval the Presidents dissolves the County Government 123(10)

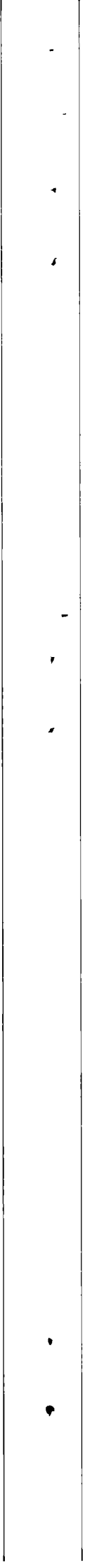
3.1 Public access and participation.

Article 118 (1) of the Constitution provides that; Parliament shall—

- (a) Conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
- (b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
- (c) (2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.

Pursuant to Article 118 of the Constitution and Standing Order 127(3) the committee invited memoranda from the public vide a notice in the local dailies.

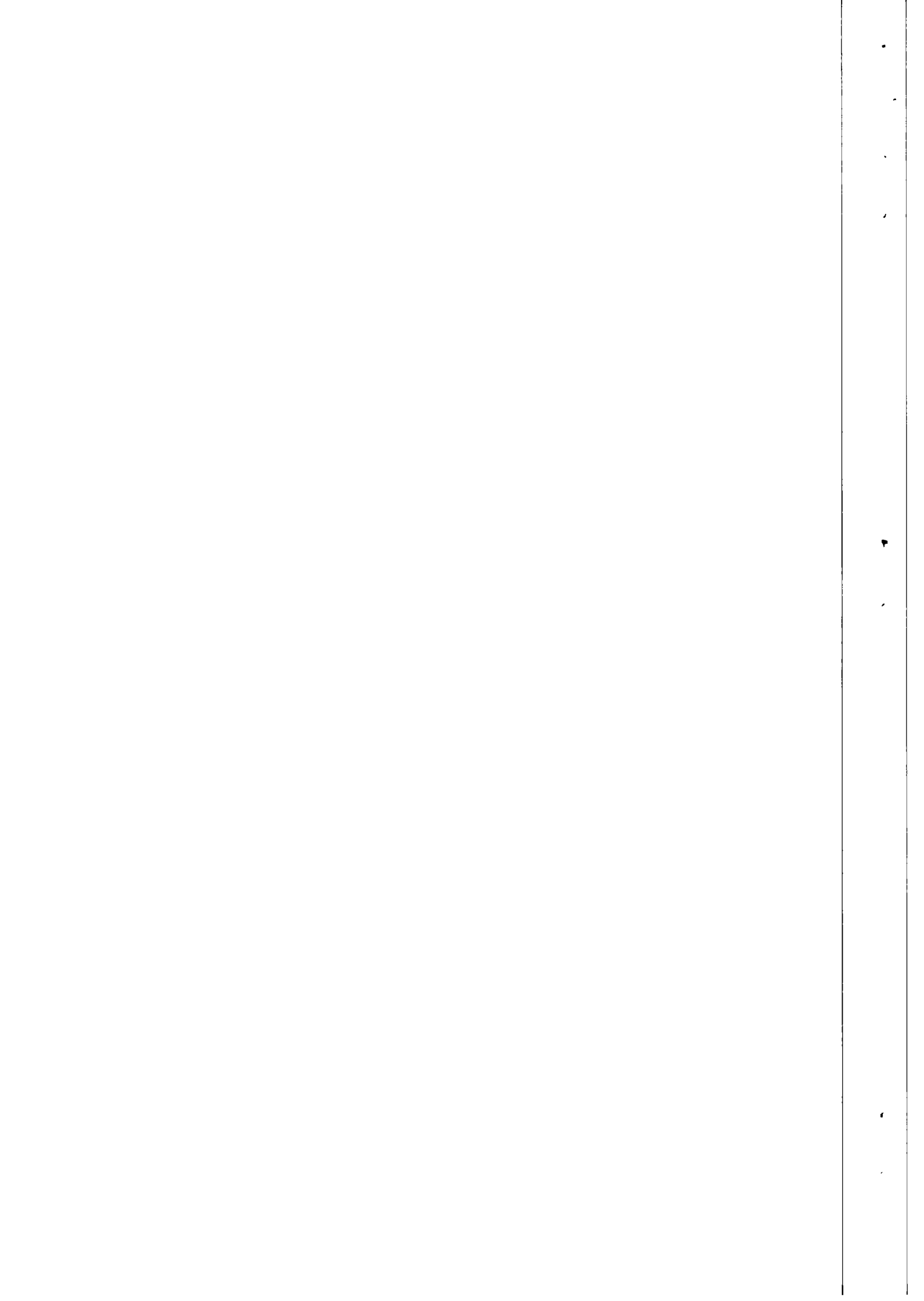
One of the most important features of the Country constitutional framework is the requirement of public participation in governance and other administrative activities. Specifically, the provisions of the following Articles are pertinent.



- i) Article 10 recognizes public participation as one of the national values;
- ii) Article 27 provides for equal treatment of all persons, while affirmative action in governance is provided for in Articles 54 and 56 of the Constitution;
- iii) Article 35 provides for the right of access to information held by the State or another person which is necessary for the exercise of any right or fundamental freedom;
- iv) Article 118 requires Parliament to conduct its business in an open manner and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It also prohibits Parliament from denying the public and media access into its sittings unless there are any justifiable reasons.

The Constitution obligates the State and all State organs to ensure adequate public consultation on all public policies, legislation or any decision that is likely to impact on the people of Kenya. Failure to factor in the mandatory requirement of public participation exposes the legislative instrument or policy framework to constitutional challenges of legitimacy, hence making it actionable for unconstitutionality in a court of law.

Effective public consultation is based on principles of openness, transparency, integrity and mutual respect. The open process facilitates



acceptability amongst the key stakeholders, subsequently facilitating efficient and effective implementation of the legislative instrument.

3.2 Communication and committal to committee

Pursuant to Standing order 127 (1) of the National Assembly the Bill was read for the first time on Tuesday 24th, July 2018 and subsequently committed to the Departmental Committee on Administration and National Security and report to the House.

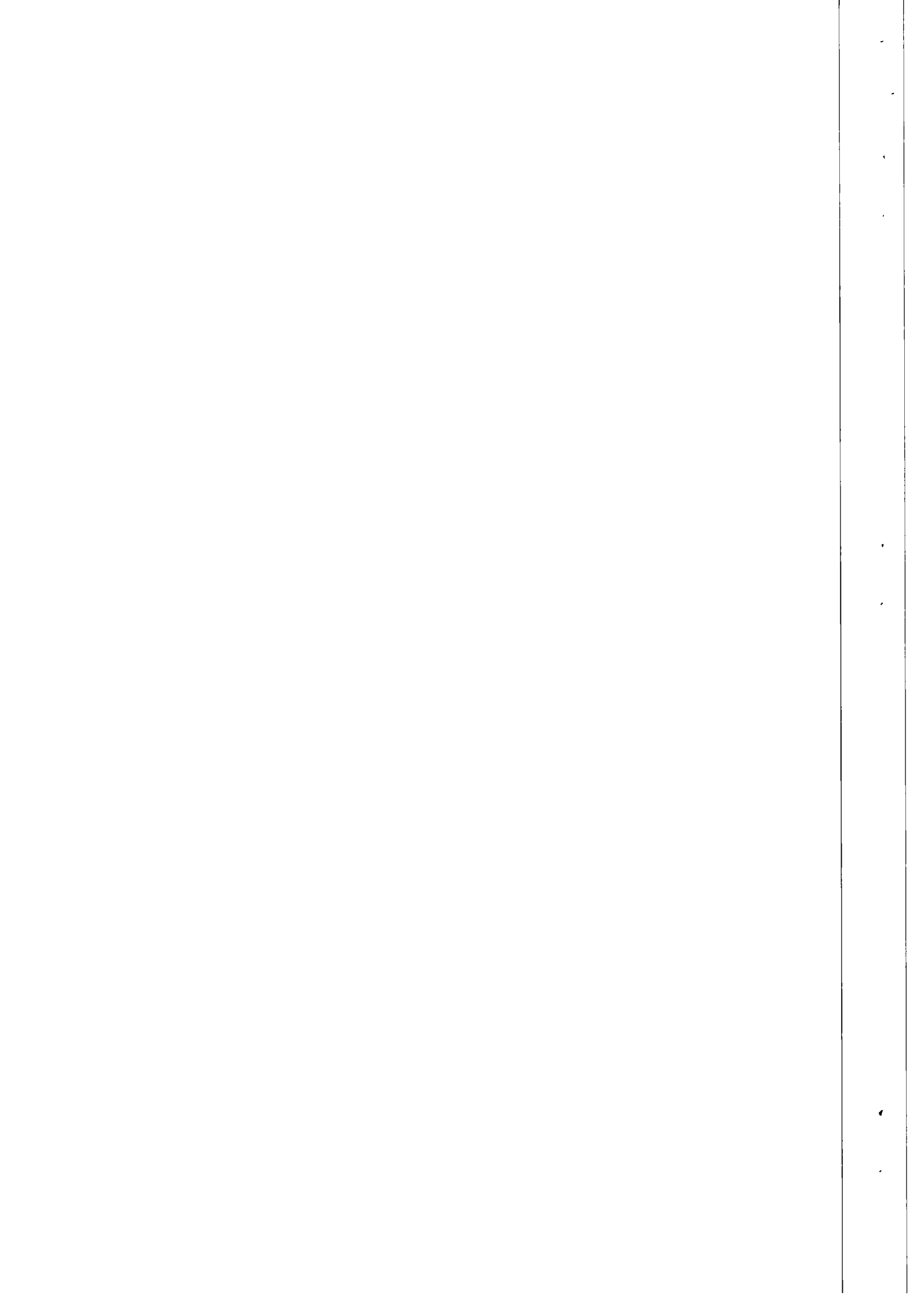
3.3 Memoranda

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the County Governments (Amendment) No. 2 Bill (Senate Bill No. 7 of 2017) The submissions/memoranda were to be received on or before Thursday 2nd August, 2018 at 5:00 pm.

The committee received submissions from the Ministry of Devolution and Asal, the Counsel of Governors and awaiting submission from the Office of the Attorney General.

3.4 Committee proceedings

The Committee held its first sitting on Tuesday 7th July, 2018 to consider the County Governments Amendment No. 2 Senate Bill No.7 of 2017. The committee adopted the report on Tuesday 9th October, 2018.



3.5 SUMMARY OF THE COUNTY GOVERNMENT (AMENDMENT) BILL (No.2), SENATE BILL NO. 7 OF 2017

The Bill was read for the first time on Tuesday 24th July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1), it is on this basis that the Committee makes this Report. The Committee received submissions from stakeholders before the adoption of this report.

The Bill seeks to amend the County Governments Act to provide for the procedure for the disposal of a report of a Commission of Inquiry established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution; and for connected purposes.

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the County Governments (Amendment) No. 2 Bill (Senate Bill No. 7 of 2017) The submissions/memoranda were to be received on or before Thursday 2nd August, 2018 at 5:00 pm.

The Committee received submissions from the Ministry of Devolution and ASAL, the Council of Governors (COG) and the Office of the Attorney General.

The proposed Bill highlights

The principal object of this Bill is to amend the County Governments Act No. 17 of 2012 so as to provide for the procedure for the disposal of a report of a Commission of Inquiry established under section 123(4) of the County Governments Act, 2012, and in particular, to govern scenarios where a Commission of Inquiry does not recommend the suspension of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

county government or situations where the President is not satisfied that justifiable reasons exist for the suspension of a county government.

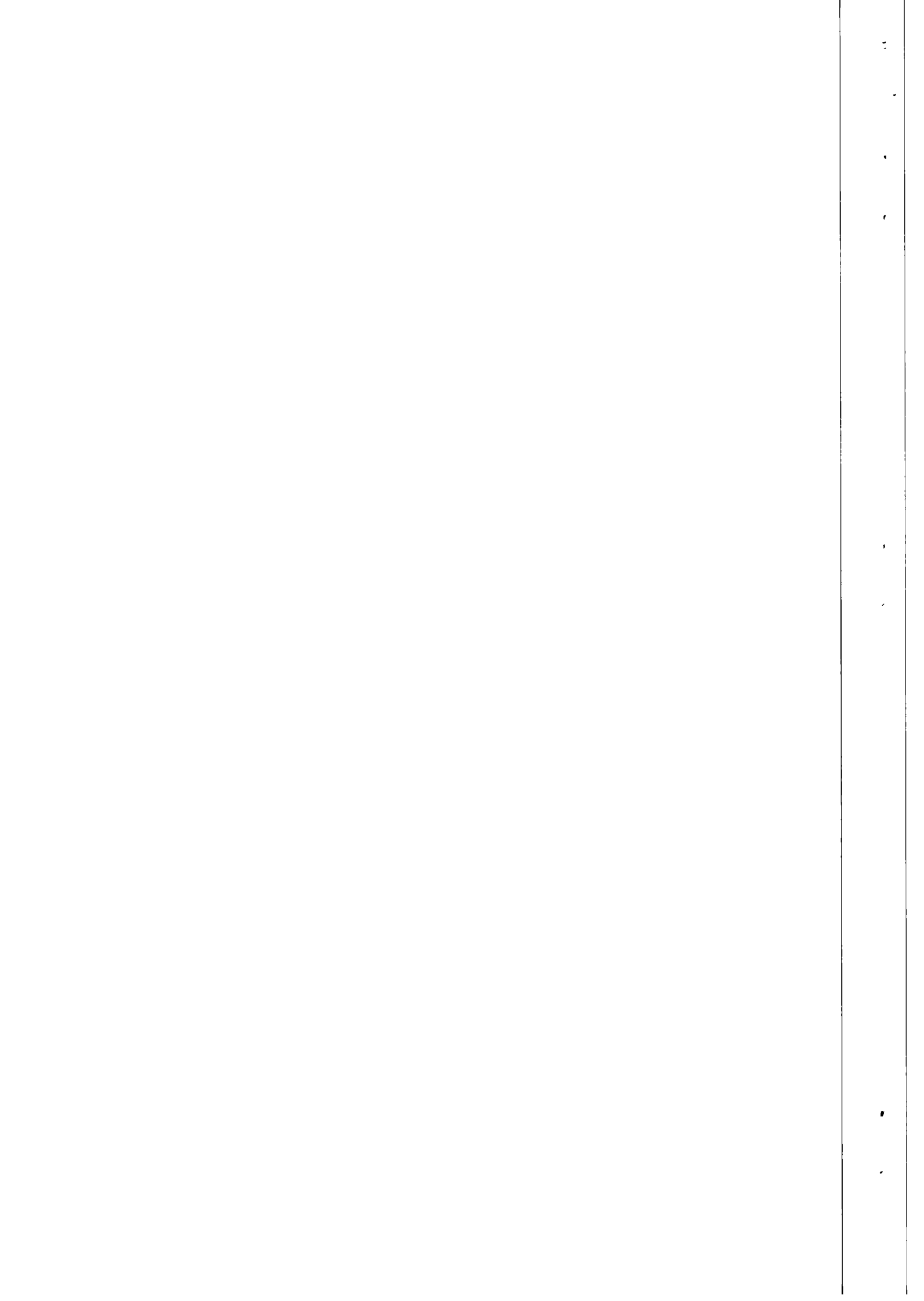
Clause 1 is the short title.

Clause 2 seeks to amend section 123 by deleting subsection (7),(8),(9), and (10) and substituting with new subsections.

Clause 3 seeks to delete section 129 of the Act and provide for a new section for termination of the suspension by the Senate.

Views by the Ministry of Devolution and ASAL

Clause	Recommendation	Committee Observation
2	In the proposed amendment to s. 123(7) Extension of time where the Commission fails to conclude within 3 months	Three months may be adequate time so as a county may not be held in a limbo for a long time
	In the proposed amendment to s. 123(13) There is need to prescribe the period within which the President can Act on the resolution of the Senate.	The Committee adopts the proposal and recommends an insertion of the words “within seven days of receipt of the Senate resolution”
3	In the new s. 129(4) the proposed 10 days for the Senate Committee is short	Agrees with the Senate proposal



Views by the Office of the Attorney General

Clause	Recommendation	Observation
2	In the proposed 123(8) does not provide for the where the President does not concur with the recommendations of the Commission of Inquiry.	There is need to provide for what happens when the President is dissatisfied;
	Proposed 123(14) to be deleted since it allows the Senate to deliberate on matters outside the scope of suspension	Agreed to
3	Renumber 129(4) as (8)	Agreed to

3.6 Submission from the Council of Governors (CoG)

The Committee requested for submission from the Council of Governors on the County Governments (Amendment) Bill Senate Bill No. 11 of 2017) vide a letter referenced NA/DC/ANS/2018(98) dated 3rd August 2018.

The Council of Governors vide a letter referenced COG/6/11Vol3(85) informed the committee that the council presented a legislative Memoranda on the bill while they were before the Senate on 8th March 2018 and 13th March 2018 respectively. The Senate adopted all the proposals as presented in the memoranda.

The Council informed the committee that it fully supports the bill and urged the National Assembly to consider and pass the bill in order to fill the gap that exists in the constitution and the County Government Act 2012.

4.0 COMMITTEE OBSERVATION

Clause 1 is the short title.

Clause 2 seeks to Amend section 123 by deleting subsection (7), (8), (9), and (10) and substitute with a new subsection. The Committee makes the following observations under Clause 2 in the proposed amendments to section 123-

- (a) **The proposed subsection (7)** seeks the introduction of a timeline for a commission of inquiry. The Committee therefore **agrees** with the proposal.

- (b) **The proposed subsection (8)** seeks to provide for an instance where the Commission of Inquiry does not make a recommendation for a suspension. The Committee therefore proposes a deletion of the proposed subsection (8) and substituting with the following new subsection—

“(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.”

Justification:

The amendment will provide a closure of the process where the Commission does not recommend the suspension of a county government.

.....

- (c) **The proposed subsection (9):** There is need to separate the instances where the President is satisfied with the recommendation for a suspension and when the President is dissatisfied with the recommendations. The Committee therefore proposes **a deletion** the words “whether or not” appearing in paragraph (a) and **substituting therefor the word “that”**.

Justification:

There is need to separate the instances where the President is satisfied with the recommendation for a suspension and when the President is dissatisfied.

- (d) There is need to provide for a closure of the process where the President is not satisfied with the recommendation of the Commission. The Committee therefore recommends an **insertion of a new subsection** immediately after the **proposed subsection (9)**—

“(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.”

Justification:

The amendment will provide a closure of the process where the President is not satisfied with the recommendation of the Commission. Under Article 192(2), the President must be satisfied with the recommendation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

(e) In the **proposed subsection (13)**—

- i)* There is need to delete the word “authorisation” and substitute with “approval” since the process involves other actors

Justification

There is need to delete the word “authorisation” and substitute with “approval” since the process involves other actor as provided for from subsection (7)-(12); the Senate is basing its decision on recommendation of other actors, it therefore qualifies as an approval of the recommendation of the other actors.

- ii)* There is need to amend to provide a timeline within which the President is required to act on the Senate resolution **by inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”.**

Justification

To provide a timeline within which the President is required to act on the Senate resolution.

- (f) The **proposed subsection (14)**; The Proposed amendments seeks to permit the Senate to make recommendations or determination on other matters which are not related to the suspension of a county government. There is therefore need to amend the proposal to limit the provision within the auspices of a suspension of a county

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

government. The Committee therefore proposes a **deletion** of the proposed subsection (14).

Justification

The Proposed amendments seek to permit the Senate to make recommendations or determination on other matters which are not related to the suspension of a county government.

Clause 3 of the Bill to be amended by renumbering the last provision under the proposed New Section 129 as subsection (8) instead of subsection (4) for a proper sequential flow.

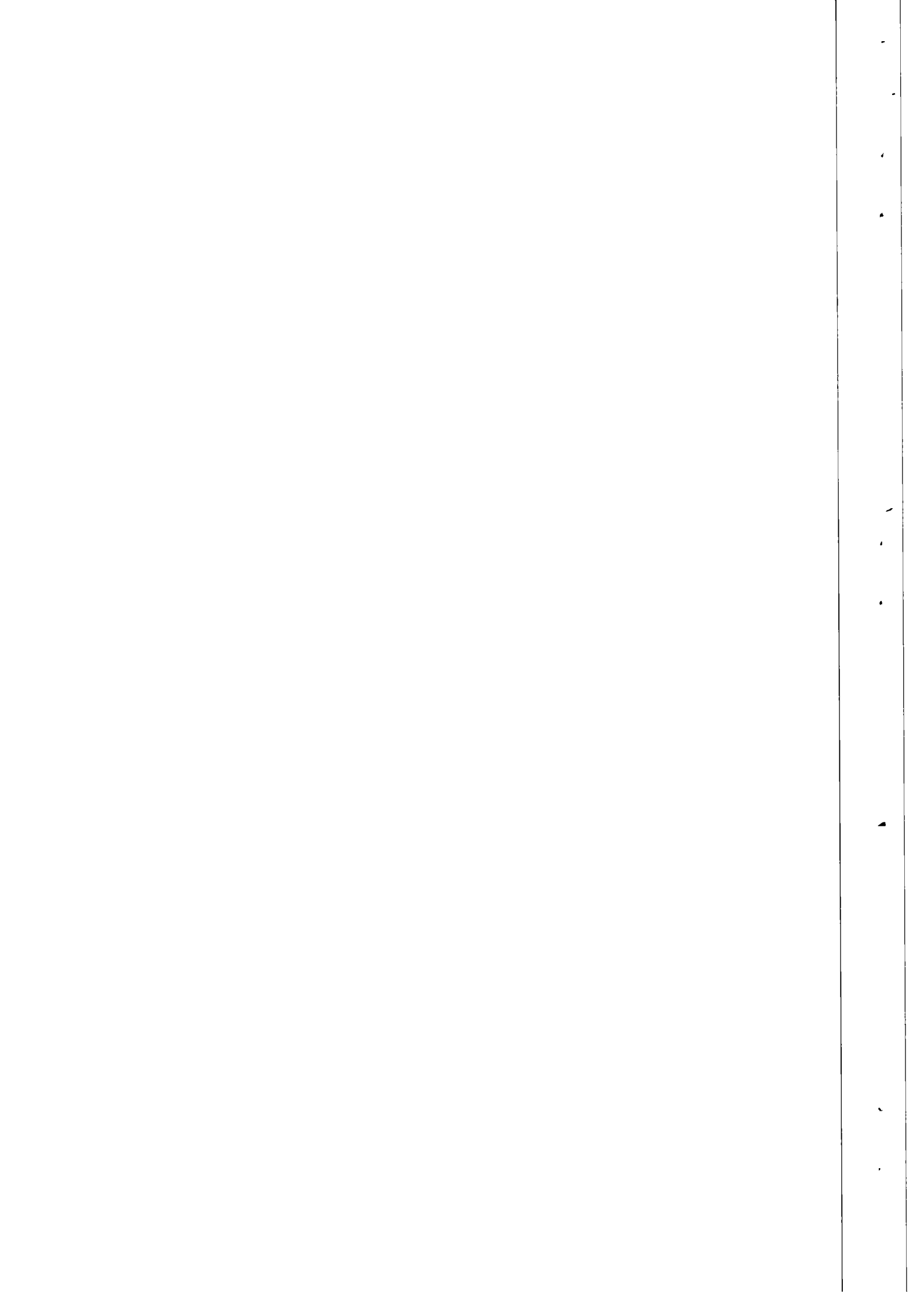
5.0 COMMITTEE RECOMMENDATIONS

Having considered all the clauses, the committee therefore proposes the following amendments as agreed upon in its meeting held on Tuesday 9th October 2018 to the Bill—

CLAUSE 2 be amended in the proposed amendments to section 123 —

(a) by deleting the proposed subsection **(8)** and substituting therefore following new subsection—

“(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body the recommendation of the Commission.”



(b) in the proposed **subsection (9)** by deleting the words “**whether or not**” appearing in paragraph (a) and substituting therefor the word “**that**”.

(c) by **inserting a new subsection** immediately after the proposed subsection (9)—

“(9a) **Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.**”

(d) in the proposed subsection **(13)** by—

- i) deleting the word “**authorization**” immediately after the word “**upon**” and substituting therefor the word “**approval**”; and
- ii) inserting the words “**within fourteen days or receipt of the Senate resolution**” immediately after the words “**the President shall**”.

(e) by deleting the in the proposed **subsection (14)**.

CLAUSE 3

Clause 3 of the Bill to be amended by renumbering the last provision under the proposed **New Section 129** as subsection (8) instead of subsection (4) for purposes of a sequential flow.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE/PAYMENT SCHEDULE

Agenda:-Adoption of the Report on the County Governments (Amendment) Bill, 2017

Venue: Committee Room, 11th Floor, Continental House.

Date : 11th October, 2018

Time : 9.30 am

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	
2.	Hon. John Waluke, MP - Vice – Chairperson	
3.	Hon. Wafula Wamunyinyi, MP	
4.	Hon. Justus Kizito, MP	
5.	Hon. Dr. Makali Mulu,MP	
6.	Hon. George Theuri, MP	
7.	Hon. Aduma Owuor, MP	
8.	Hon. Didmus Wekesa Barasa Mutua, MP	
9.	Hon. Geoffrey Kingagi Muturi, MP	
10.	Hon. Marselino Malimo Arbelle, MP	
11.	Hon. Dr. Tecla Chebet Tum, MP	
12.	Hon. Josphat Kabinga Wachira, MP	
13.	Hon. Nimrod Mbithuka Mbai, MP	
14.	Hon. Ngunjiri Wambugu, MP	
15.	Hon. Abdi Omar Shurie, MP	
16.	Hon. Halima Muccheke, MP	
17.	Hon. Peter Masara, MP	
18.	Hon. Ahmed Kolosh Mohammed ,MP	
19.	Hon. Oku Kaunya,MP	

1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

11. 12. 13. 14. 15. 16. 17. 18. 19. 20.



MINUTES OF THE 60TH SITTING OF DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY 11TH OCTOBER, 2018 IN COMMITTEE ROOM ON 11TH FLOOR PROTECTION HOUSE AT 9:30 AM

PRESENT

1. The Hon. Paul Koinange, MP - **Chairperson**
2. The Hon. Wafula Wamunyinyi, MP
3. The Hon. Aduma Owour, MP
4. The Hon. Dr. Makali Mulu, MP
5. The Hon. Justus Kizito, MP
6. The Hon. Nimrod Mbithuka Mbai, MP
7. The Hon. Ahmed Kolosh Mohammed, MP
8. The Hon. Marselino Malimo Arbelle, MP
9. The Hon. Geoffrey King'agi Muturi, MP
10. The Hon. Abdi Omar Shurie, MP
11. The Hon. Dr. Tecla Chebet Tum, MP
12. The Hon. Halima Mucheke, MP
13. The Hon. Peter Francis Masara, MP
14. The Hon. Oku Kaunya, MP

APOLOGIES

1. The Hon. John Waluke, MP - **Vice-Chairperson**
2. The Hon. George Theuri, MP
3. The Hon. Ngunjiri Wambugu, MP
4. The Hon. Josphat Kabinga Wachira, MP
5. The Hon. Didmus Wekesa Barasa Mutua, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Aden Abdullahi - Senior Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant
3. Ms. Clarah Kimeli - Senior Legal Counsel
4. Mr. Donald Manyala - Research Officer III

MIN.NO.143/ANS/2018: PRELIMINARIES

The meeting was called to order at half past nine o'clock, with a word of prayer from the Hon. Edward Oku Kaunya, MP.

MIN.NO.144/ANS/2018:

**ADOPTION OF THE REPORT ON THE
COUNTY GOVERNMENT (AMMENDMENT)
NO.2 BILL (SENATE BILL NO. 7 OF 2017)**

The report was unanimously adopted after having been proposed by Hon. Geoffrey King'agi Muturi, MP and seconded by Hon. Dr. Makali Mulu, MP and signed by the Chairman.

MIN. NO.145/ANS/ 2018:

ADJOURNMENT

There being no other business the meeting was adjourned at quarter to eleven O'clock.

SIGNED



**HON. PAUL KOINANGE, M.P.
(CHAIRPERSON)**

DATE: 16th Oct 2017

**MINUTES OF THE 59TH SITTING OF DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY 9TH
OCTOBER, 2018 IN COMMITTEE ROOM, 11TH FLOOR, PROTECTION HOUSE AT
9:30 AM**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. The Hon. Paul Koinange, MP | - | Chairperson |
| 2. The Hon. John Waluke, MP | | Vice-Chairperson |
| 3. The Hon. Dr. Makali Mulu, MP | | |
| 4. The Hon. George Theuri, MP | | |
| 5. The Hon. Aduma Owour, MP | | |
| 6. The Hon. Geoffrey Kingagi Muturi, MP | | |
| 7. The Hon. Abdi Omar Shurie, MP | | |
| 8. The Hon. Dr. Tecla Chebet Tum, MP | | |
| 9. The Hon. Halima Mucheke, MP | | |
| 10. The Hon. Peter Francis Masara, MP | | |
| 11. The Hon. Nimrod Mbithuka Mbai, MP | | |
| 12. The Hon. Marselino Malimo Arbelle, MP | | |

APOLOGIES

1. The Hon. Wafula Wamunyinyi, MP
2. The Hon. Justus Kizito, MP
3. The Hon. Oku Kaunya, MP
4. The Hon. Josphat Kabinga Wachira, MP
5. The Hon. Didmus Wekesa Barasa Mutua, MP
6. The Hon. Ngunjiri Wambugu, MP
7. The Hon. Ahmed Kolosh Mohammed, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|------------------------|
| 1. Mr. Aden Abdullahi | - | Senior Clerk Assistant |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Clarah Kimeli | - | Senior Legal Counsel |

MIN.NO.140/ANS/2018:

PRELIMINARIES

The meeting was called to order at ten o'clock, with a word of prayer from the Hon. Marselino Malimo Arbelle, MP.

MIN.NO.141/ANS/2018:

**CONSIDERATION OF THE REPORT ON
THE COUNTY GOVERNMENT
(AMMENDMENT) NO.2 BILL (SENATE BILL
NO. 7 OF 2017)**

The Committee considered the report and agreed as follow:-

Clause 1 is the short title.

Clause 2 seeks to Amend section 123 by deleting subsection (7),(8),(9), and (10) and substitute with a new subsections. The Committee makes the following observations under Clause 2-

- (a) **The proposed subsection (7)** seeks the introduction of a timeline for a commission of inquiry. The Committee therefore **agrees** with the proposal.
- (b) **The proposed subsection (8)** seeks to provide for an instance where the Commission of Inquiry does not make a recommendation for a suspension. The Committee therefore proposes a deletion of the proposed subsection (8) and substituting with the following new subsection—

“(8) Where the Commission does not recommend the suspension of a county government, the President shall, within fourteen days of receipt of the report of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental bodies the recommendation of the Commission.”

Justification:

The amendment will provide a closure of the process where the Commission does not recommend the suspension of a county government.

- (c) **The proposed subsection (9):** There is need to separate the instances where the President is satisfied with the recommendation for a suspension and when the President is dissatisfied with the recommendations. The Committee therefore proposes a **deletion** the words **“whether or not”** appearing in paragraph (a) and substituting therefor the word **“that”**.

Justification:

There is need to separate the instances where the President is satisfied with the recommendation for a suspension and when the President is dissatisfied.

- (d) There is need to provide for a closure of the process where the President is not satisfied with the recommendation of the Commission. The Committee therefore recommends an **insertion of a new subsection** immediately after the **proposed subsection (9)**—

“(9a) Where the President is not satisfied that justifiable grounds exist for suspension of a county government the President shall, within fourteen days of receipt of the report

of the Commission under subsection (7), notify the Speaker of the Senate and the apex intergovernmental body of his dissatisfaction.”

Justification:

The amendment will provide a closure of the process where the President is not satisfied with the recommendation of the Commission. Under Article 192(2), the President must be satisfied with the recommendation.

(e) In the **proposed subsection (13)**—

- i) There is need to delete the word “authorisation” and substitute with “approval” since the process involves other actor

Justification

There is need to delete the word “authorisation” and substitute with “approval” since the process involves other actor as provided for from subsection(7)-(12); the Senate is basing its decision on recommendation of other actors, it therefore qualifies as an approval of the recommendation of the other actors.

- ii) The there is need to amend to provide a timeline within which the President is required to act on the Senate resolution **by inserting the words “within fourteen days or receipt of the Senate resolution” immediately after the words “the President shall”**.

Justification

To provide a timeline within which the President is required to act on the Senate resolution.

- (f) The **proposed subsection (14)**; The Proposed amendments seeks to permit the Senate to make recommendations or determination on other matters which are not related to the suspension of a county government. There is therefore need to amend the proposal to limit the provision within the auspices of a suspension of a county government. The Committee therefore proposes a **deletion** of the proposed subsection (14).

Justification

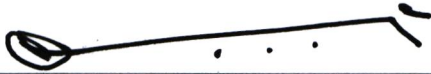
The Proposed amendments seek to permit the Senate to make recommendations or determination on other matters which are not related to the suspension of a county government.

Clause 3 of the Bill to be amended by renumbering the last provision under the proposed New Section 129 as subsection(8) instead of subsection (4) for a proper sequential flow.

MIN. NO.142/ANS/ 2018:

ADJOURNMENT

There being no other business the meeting was adjourned half past twelve O'clock.

SIGNED  _____

DATE: 16th oct 2018

HON. PAUL KOINANGE, M.P.
(CHAIRPERSON)

**MINUTES OF THE 54TH SITTING OF DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY 7TH AUGUST,
2018 IN COMMITTEE ROOM, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT
BUILDINGS AT 11:30 AM**

PRESENT

1. The Hon. Paul Koinange, MP - **Chairperson**
2. The Hon. John Waluke, MP **Vice-Chairperson**
3. The Hon. Dr. Makali Mulu, MP
4. The Hon. George Theuri, MP
5. The Hon. Nimrod Mbithuka Mbai, MP
6. The Hon. Geoffrey Kingagi Muturi, MP
7. The Hon. Didmus Wekesa Barasa Mutua, MP
8. The Hon. Marselino Malimo Arbelle, MP
9. The Hon. Abdi Omar Shurie, MP
10. The Hon. Josphat Kabinga Wachira, MP
11. The Hon. Halima Mucheke, MP
12. The Hon. Oku Kaunya, MP
13. The Hon. Aduma Owour, MP
14. The Hon. Ngunjiri Wambugu, MP
15. The Hon. Dr. Tecla Chebet Tum, MP

APOLOGIES

1. The Hon. Wafula Wamunyinyi, MP
2. The Hon. Justus Kizito, MP
3. The Hon. Ahmed Kolosh Mohammed, MP
4. The Hon. Peter Francis Masara, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Aden Abdullahi - Senior Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant
3. Mrs. Clara Kimeli - Legal Counsel I

MIN.NO.129/ANS/2018:

PRELIMINARIES

The meeting was called to order at ten minutes to twelve o'clock with a word of prayer from Hon. Marselino Malimo Arbelle, MP.

The Committee was briefed by the Legal Counsel as follows:- That;

The Bill seeks to amend the County Governments Act (No. 17 of 2012) to provide for the procedure for the disposal of a report of a Commission of Inquiry established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution.

- Article 192 of the Constitution provides for procedure of suspension of a county government, (1)(a) provides for suspension in emergency arising out of war or conflict whereas (b) provides for other exceptional circumstance. Section 123 of the Act provides for those exceptional circumstances to be through a petition to the President in instances where a county government engages against the common needs and interest of common citizens.
- Section 123(2) requires the petition to be supported by at least signatures of 10% registered voters of the County.
- 123(3) Upon receiving the petition the President submits the same to the Intergovernmental Relations Committee which then submits an approval to the president.
- The President thereafter appoints a Commission with the approval of the Senate 123(4).
- 123(5) provides for composition of the Commission.
- 123(7) the Commission makes recommendations to the President.
- 123(8) the President if satisfied on recommendations for a suspension forwards the report to the Speaker of the Senate.
- 123(9) the Senate considers the report and makes a resolution accordingly.
- Where the Senate adopts a recommendation for an approval the Presidents dissolves the County Government 123(10)

Clause 1 is the short title.

Clause 2 seeks to—

- (a) Amend section 123 by deleting subsection (7),(8),(9), and (10) and substitute with a new subsections.
 - i. The only variance in (7) is introduction of a timeline for the Commission of inquiry;

- ii. New (8) seeks to provide for an instance where the Commission of Inquiry does not make a recommendation for a suspension (the current section does not provide for the same);
- iii. New (9),(10),(11) and 12 provides for an elaborate procedure where the President is satisfied with the recommendation; and
- iv. New (14) provides for where the president is dissatisfied. (Not provided for in the current legislation).

Clause 3, to provide for procedure of termination of a suspension by the Senate.

Article 192(4) gives the Senate the power to terminate a suspension.

The proposed clause provide for an elaborate way of terminating it.

Observation

Both clauses were adopted by the Committee since they seek to fill a lacuna in the law.

MIN.NO.131/ANS/2018: CONSIDERATION OF THE NATIONAL FLAG EMBLEMS & NAMES (AMENDMENT) BILL, 2017

The Committee was briefed by the Legal Counsel as follows:- That;

The Bill seeks to amend the National Flags and Emblems Act (Cap 99) to —

- i. align some sections of the Act to the provisions of the Constitution;
- ii. to introduce new actors with authority to fly the national flag on Motor vehicle; and
- iii. to allow any person to fly the flag in places of residence during the national holidays.

Clause 2 seeks to insert a new definition of Cabinet Secretary to the Act

Implication: it defines where the power in relation to flags and emblems in the executive is vested.

Clause 3, 8 and 9 seeks to substitute the word “Minister” with Cabinet Secretary

Implication: Align with the constitution.

Clause 4 seeks to introduce new actors with authority to fly the national flag on Motor vehicle; the Deputy Speaker of Senate, the Deputy Speaker of the National Assembly and the Deputy Chief Justice

Clause 5 seeks to allow any person to fly the flag in places of residence during the national holidays as a sign of patriotism.

Clause 6 seeks to substitute the word Local Authority with “county government”

Implication: Aligns the provision with the Constitution.

Committee Observation

Clause 4 of the Bill was rejected. The Committee was of the opinion that Deputies should be allowed to fly flags.

Flying of the National Flag in the homes should not be restricted to public holidays but all days.

MIN.NO.132/ANS/2018: THE ASSUMPTION OF THE OFFICE OF THE COUNTY BILL, 2018

The Bill seeks to provide for the procedure and ceremony for the assumption of the Office of the Governor by a governor elect.

- Section 30(1) of the County Government Act provides that the governor shall take and prescribe oath and affirmation as set out in the schedule;
- The current law does not provide for the actual procedure of the assumption of office by a governor;
- The proposed legislation is a mirrors the Assumption of Office by the President of the;
- Clauses 2-21 provide for the actual procedure;
- Clause 22 repeals section 30 of the (1) Act; and
- Clause 23 amends section 86 of the Elections Act to provide for a procedure for election of a governor where a sitting governor dies.

Committee Observation:

Clause 23 – was differed for further consultation since it is seeking to amend the Election Act.

MIN. NO.134/ANS/ 2018: ADJOURNMENT

There being no other business the meeting was adjourned at half past twelve O'clock.

SIGNED 
HON. PAUL KOINANGE, M.P.
(CHAIRPERSON)

DATE: 16th Oct 2018



2 OPEN
pls deaf
FA
12/8/18

COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel : (020) 2403314, 2403313
+254 729 777 281
E-mail: info@cog.go.ke

Our Ref: COG/6/11Vol3 (85)

9th August 2018

The Clerk of the National Assembly
Parliament Buildings
NAIROBI

1 Dlaty
10/8/18

Att: Jeremiah Ndombi

MEETING WITH DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY ON THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL (SENATE BILL NO. 1 OF 2018) AND THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2017)

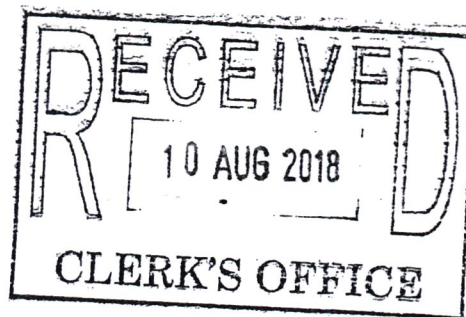
The Council acknowledges receipt of your letter dated 3rd August, 2018 referenced NA/DC/ANS/2018/98 on the above subject matter and whose contents we duly note.

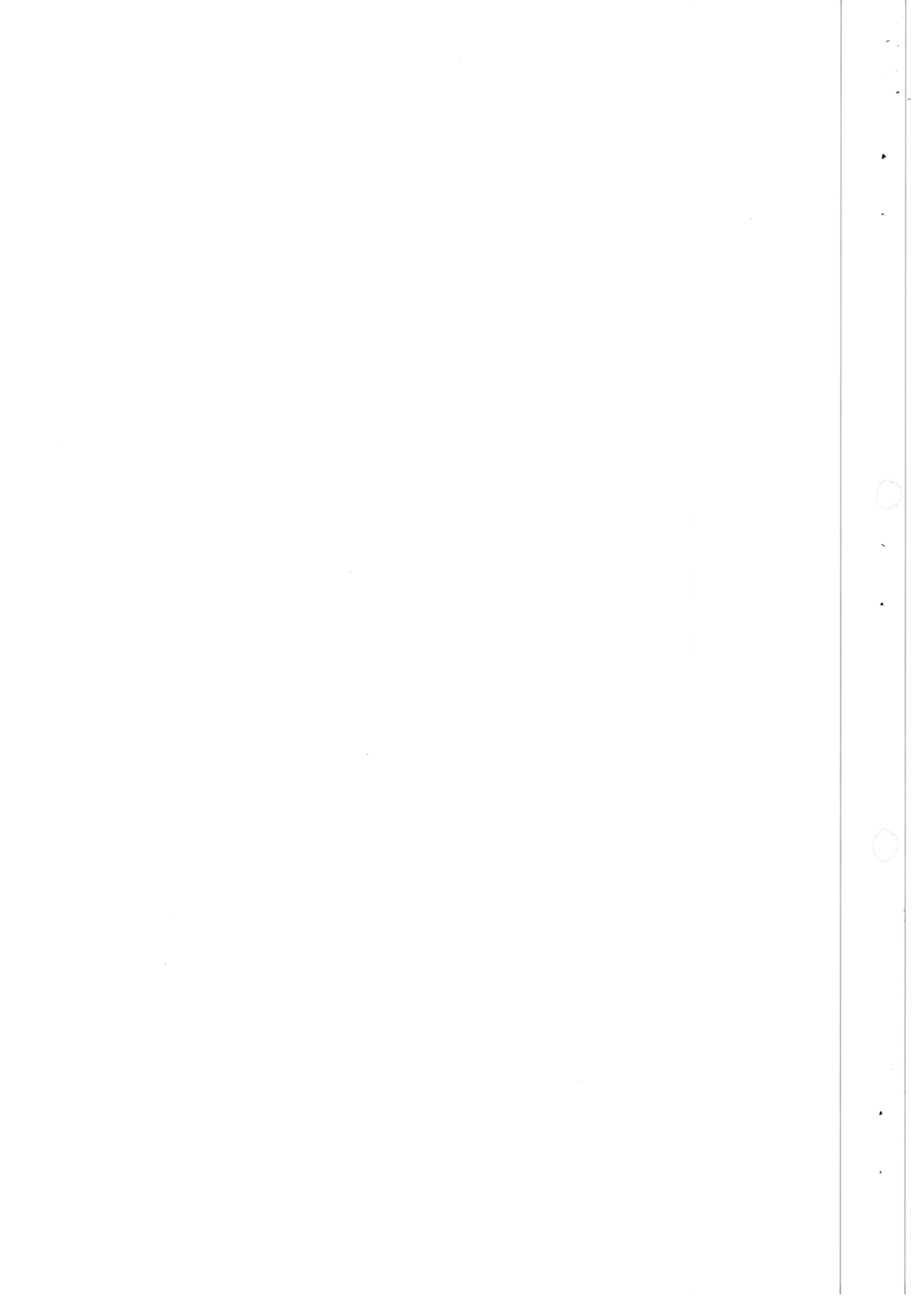
We wish to inform you that the Council presented a legislative memoranda to the two Bills while they were before the Senate on 13rd March, 2018 and 8th March, 2018 respectively. The Senate in its wisdom adopted all our proposals as presented in the Memoranda (attached herewith for your ease of reference).

In view of the above, the Council of Governors fully supports the two Bills and urges the National Assembly to consider and pass the two Bills in order to fill the gap that exists in the Constitution and County Governments Act, 2012 as to the assumption of office of the office Governor and Deputy Governor upon occurrence of various events.

Caroline Odandi
For: Chief Executive Officer.

Copy to: All Excellency Governors
All County Attorneys





② Aroen
pls deal
FA
13/8/18



① Dants
13/8/18

COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE COUNTY
GOVERNMENTS (AMENDMENT) BILL, 2017

TO

SENATE

FROM

THE COUNCIL OF GOVERNORS
LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that these legislations properly respond to the key issues, and further reflects the spirit and purpose of the devolution process.

Having reviewed the County Government (Amendment) Bill, 2017 in its entirety, the Council of Governors supports the proposed amendments as they seek to address the gaps existing within the Constitution and the County Governments Act, 2012 especially in regards to the assumption of the office of Governor and Deputy Governor.

Notwithstanding the above, the Council proposes the following amendments to ensure that the Bill is better implemented:

CLAUSE	PROVISION IN THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
Clause 11 The Clause intends to amend section 32 of the County Governments Act by inserting new sections	<u>Section 32A: Inability of the Deputy Governor or Governor to assume office.</u> 32A (2). If the Deputy Governor dies before assuming office or is unable to assume office for whatever reasons, office of the Deputy Governor shall be declared vacant by the person declared elected as the Governor	Amend the proposed Section 32A to read as follows: Subtitle amend to read: <i>Death or otherwise before assuming office.</i> Then amend section 34A(2) to read as follows: <i>32A (2) If the Deputy Governor dies before assuming office or is unable to assume office for whatever reasons, the elected Governor upon assuming office shall</i>	This is to ensure that there is no future gaps in law and also align it with the provisions of the proposed section 32CD as regards to the appointment of persons to the office of the Deputy Governor by the Governor.

		<i>declare the office vacant and appoint another person as the new Deputy Governor in terms of section 32D.</i>	
	<p><u>Section 32D: Appointment of a Deputy Governor where a Deputy Governor assumes the office of Governor.</u></p> <p>32D (1). A person who assumes office of governor under article 182(2) of the Constitution shall-</p> <p>(a) Within fourteen days, nominate the deputy governor; and</p> <p>(b) With the approval of the County Assembly, appoint a Deputy Governor.</p> <p>(2)...</p>	<p>Amend the sub-title of the proposed section to read as follows:</p> <p><u>Section 32D: Filling of the vacancy in the office of Deputy Governor.</u></p> <p>Also amend section 32D(1) to read as follows:</p> <p><i>32D (1). Where there is a vacancy in the office of the Deputy Governor as provided for under section 32C, the Governor shall-</i></p> <p><i>(a) Within fourteen days, nominate the Deputy Governor, and</i></p> <p><i>(b) With approval of the County Assembly, appoint the Deputy Governor.</i></p> <p>(2)...</p>	<p>The proposed amendment to introduce section 32D immediately after section 32 of the Act only allows the Governors to appoint a Deputy Governor where the office has fallen vacant as a result of the Deputy Governor assuming the office of Governor in terms of Article 182(2) of the Constitution. As such the situations captured in the proposed section 32C will not be addressed. This is the reason why the Council is proposing the said amendment.</p>

Proposed further amendments to the County Governments Act

The Council of Governors further proposes the following amendments to the County Governments Act, 2012 which are not captured in the Bill.

SECTION OF THE ACT	PROVISION OF THE SECTION	PROPOSED AMENDMENT	JUSTIFICATION
Section 25: Coming into force of a law	25(2) Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the county Gazette and Kenya Gazette, whichever comes earlier, unless the legislation stipulates a different date on or time at which it shall come into force.	Amend by deleting the word “whichever comes earlier” appearing immediately after the word “Kenya Gazette” to read as follows. <i>25(2). Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the Kenya Gazette and County Gazette, unless the legislation stipulates a different date on or time at which it shall come into force.</i>	To align it with the judgment of the High Court of Kenya in <i>James Gacheru Kariuk & 3 Others vs. Attorney General & 11 Others</i> [2017] eKLR, which declared that Section 25(2) of the County Governments Act is inconsistent with Article 199(1) of the Constitution to the extent that it uses the phrase “whichever comes earlier” and is invalid to that extent only
Section 44.	Appointment of County Secretary.	Amend the Act by introducing the following new section immediately after section 44. <u>Appointment of County Attorney.</u> 44A (1) There is established in each county, the Office of the County Attorney. (2) The Office of the County Attorney shall consist of- (a) the County Attorney; (b) the Deputy County Attorney; and (c) such other number of County Legal Counsel as the County Attorney may, in consultation with the County Public Service, consider necessary.	This is to make the Office of County Attorney who will be the chief legal advisor to the County Government anchored in law. The proposed amendments borrows heavily from the Office of County Attorney Bill which lapsed with the 11 th Parliament.

	<p>(3) The County Attorney shall be appointed by the Governor with the approval of the County Assembly.</p> <p>(4) The County Attorney shall be appointed from among persons who have—</p> <ul style="list-style-type: none">a) at least ten years experience as judicial officers or legal practitioners; orb) at least ten years experience in any other legal field. <p>(5) The County Attorney as the principal legal adviser to the County Government shall-</p> <ul style="list-style-type: none">a) attend the county executive committee meetings but shall have no right to vote on any matter before such committee;b) represent the county government in court or in any other legal proceedings to which the county government is a party, other than criminal proceedings;c) advise county government departments on legislative and other legal matters;d) negotiate, draft, vet and interpret documents and agreements for and on behalf of the County Government and its agencies;e) be responsible for the revision of county laws;(g) represent the County Government in all civil and constitutional matters;	
--	--	--

		<p>(h) represent the County Government in matters before courts and tribunals within the country;</p> <p>(i) liaise with the Office of the Attorney-General when need arises; and</p> <p>(j) perform any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.</p> <p>5(1) The County Attorney shall, in discharging the functions under this Act, have power to-</p> <p>(a) appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the County Attorney's right of audience is not excluded;</p> <p>(b) require any officer in the county public service to furnish any information in relation to any matter which is the subject of a legal inquiry;</p> <p>(c) summon any officer in the county public service to explain any matter which is the subject of litigation by or against the County Government;</p> <p>and</p> <p>(d) issue directions to any officer performing legal functions in any County Government department.</p>	
--	--	---	--

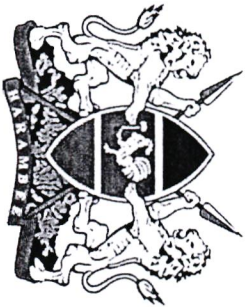
		<p>(2) The County Attorney shall—</p> <p>(a) establish such administrative units in the Office of the County Attorney, as may be necessary for the effective discharge of the functions of the office under this Act; and</p> <p>(b) perform any other action necessary in the administrative interests of the Office.</p> <p>(3) The County Attorney may upon request, appear and advise on any legal matter in any committee of the County Assembly.</p>	
<p>Section 42: County executive to remain in office after elections</p>	<p>42(2). The constitution of a new executive committee after an election under subsection (1) shall be finalized within twenty-one days of the swearing in of the members of the county assembly</p>	<p>Delete the section 42(2) or align it with the provisions of The Public Appointments (County Assemblies Approval) Act, 2017 which provides for the procedure of approval of the County Executive Committee Members by the County Assembly including timelines.</p>	<p>The Council of Governors opines that the provisions of the Public Appointments (County Assemblies Approval) Act, 2017, is the substantial law in terms of the appointments of the CECs as well other County Officers which require approval of the County Assembly. The provision of section 42(2) of the Act contradicts Public Appointments (County Assemblies Approval) Act, 2017, hence should be deleted or aligned to it.</p>

Recommendation.

The promulgation of the Constitution of Kenya and subsequently the enactment of the County Governments Act, ensured that devolution which is geared towards sharing of resources and power is implemented. The process of implementing devolution has presented itself with opportunities as well as challenges.

One of the key challenge that has been witnessed five years into devolution, is lack of a clear legal framework to provide for the assumption of office of the County Governor by a Deputy Governor as well as the appointment of Deputy Governor by the Governor whenever a vacancy arises in the office.

The Council of Governors believes that the enactment of the Bill into the Law will address the legal lacuna that exists both in the Constitution and the County Governments Act, 2012. The Council therefore supports the Bill and at the same time urges the Senate to adopt the proposed amendments by the Council of Governors.



COUNCIL OF GOVERNORS

Dlantz

18/11

LEGISLATIVE MEMORANDUM TO THE SENATE STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS ON THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL, 2018

FROM

THE COUNCIL OF GOVERNORS

13TH MARCH, 2018

MEMORANDUM ON THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL, 2018

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the Assumption of Office of the County Governor Bill, 2018 (the Bill):

A. Comments on Specific Provisions:

Section of the Bill	Provision of Section in the Bill	Proposed Amendment	Rationale for Amendment and Recommendation
5(2)(k) as read with 5(4)	5(2)(k) The Committee shall be an ad hoc committee and shall consist of two persons nominated by the Governor-elect.	<i>Insert a new clause 5(3) Immediately upon the declaration of the results of the elections by the Independent Electoral and Boundaries Commission, the Governor- elect shall nominate two persons to sit in the committee.</i>	This provision takes note of the fact that by the time the Chairperson is calling for the first meeting, the election has not happened yet. There is no Governor-elect at the time. As such, the two persons nominated may join the committee immediately IEBC declares the winner for the Governor-elect position.

5(2)(b)	The Committee shall be an ad hoc committee and shall consist of the principal legal adviser in the respective county.	<p>Amend to read:</p> <p><i>The Committee shall be an ad hoc committee and shall consist of the officer in charge of legal matters in the County.</i></p>	The officer in charge of legal matters in one County may be the 'County Attorney' and in another County it may be the Director of Legal Services in another. The Council is lobbying for the enactment of the 'Office of the County Attorney Bill' so that there is uniformity in the Counties.
5(2)	The Committee shall be an ad hoc committee and shall consist of-	<p>Include a provision as follows:</p> <p><i>5(k)(l) a representative from the judiciary</i></p>	The representative from the judiciary is the link between the honorable judges who will preside over the swearing-in ceremony. This is based on experience from the swearing -in of Governors in 2017.
5(2)	The Committee shall be an ad hoc committee and shall consist of-	<p>Include a provision as follows:</p> <p><i>5(k)(m) a representative from the National Intelligence Service</i></p>	Based on experience, the representative from the National Intelligence Service was of help particularly with regards to security. This had also been proposed in the 2016 Bill and also in the 2017 Gazette Notice on Assumption of Office.
5		<p><i>Insert the following new clauses:</i></p>	The Bill should prescribe what happens in a situation where the there is a vacancy in membership

		<p>5(4) A vacancy in the membership of the Committee shall not affect the decisions of the Committee.</p> <p>5(5) In the absence of the chairperson, the members of the committee shall elect a chairperson from amongst their number.</p>	<p>and where the Chairman is unavailable to chair the meeting. Business of the Committee should not be hindered by these.</p>
5(7)	<p>The term of office of a Committee established under this section shall lapse upon the submission of the report of the Committee to the county assembly in accordance with section 16.</p>	<p>Amend to read:</p> <p><i>The term of office of a Committee established under this section shall lapse upon the submission of the report of the Committee to the county assembly in accordance with section 21.</i></p>	<p>The proper section to be referred to is Section 21.</p>
6(1) (b)	<p>ensure the provision of security services of the Governor-elect;</p>	<p>Amend to read:</p> <p><i>The functions of the committee are to ensure and coordinate the provision of security services of the Governor-elect;</i></p>	<p>The committee should also coordinate the provision of security to ensure that protocol is observed.</p>
6(c)	<p>put in place the necessary facilities and deploy the necessary personnel to be at the service of the Governor-elect upon assumption of office;</p>	<p>Clarify the kind of facilities that will be needed and who exactly are the necessary personnel and their roles.</p>	<p>This clause needs to be clear and precise on what are the facilities and the personnel at the service of the Governor-elect upon assumption of</p>

			office as most Governors prefer to come with their trusted aides.
6(d)	coordinate the briefings of the Governor-elect by relevant county public officers;	<p>Amend to read:</p> <p><i>(d) coordinate the briefings of the Governor-elect by the relevant county public officers which shall include, but not limited to the following-</i></p> <ul style="list-style-type: none"> <i>(i) an up to date assets register;</i> <i>(ii) an up to date register of liabilities;</i> <i>(iii) a complete list of all bank accounts and reconciled balances;</i> <i>(iv) a report of staff establishment per department;</i> <i>(v) a comprehensive report on county entities (corporations) and agencies containing information outlined in (i) to (iv);</i> <i>(vi) a report on all ongoing projects including donor funded projects;</i> <i>(vii) an up to date report on all pending legal cases; and</i> <i>(viii) county source of funding</i> 	<p>It is important to be clear on the briefings that the Governor should receive. This is also borrowed from the Gazette Notice mentioned above. It is important for the Bill to provide for this for the sake of uniformity across the Counties.</p> <p>The Formats for all the items mentioned herein may be borrowed from the 2017 Gazette Notice on Assumption of Office.</p>
6	-	<p>Insert new clause 6 (g):</p>	<p>The Bill needs to prescribe who prepares the oath to avoid confusion and delay of the documents as was</p>

		prepare the oath that the Governor-elect shall read and sign.	seen previously. Further, we propose that the certificate of inauguration should be the same across all 47 counties and should be prescribed in the schedule.
9	Upon the declaration of the final results of the election the Governor by the Commission under Article 180 of the Constitution and section 39 of the Elections Act, the Committee shall ensure that the Governor-elect and Deputy Governor-elect are accorded adequate security.	To include 'of' after the word 'election'. Upon the declaration of the final results of the election of the Governor by the Commission under Article 180 of the Constitution and section 39 of the Elections Act, the Committee shall ensure that the Governor-elect and Deputy Governor-elect are accorded adequate security.	Typographical error
10(2)	The county governor-elect may for the purpose of subsection (1) request in writing, for such information from a county public officer as the county governor-elect may consider necessary.	Amend to read: The Committee may, in carrying out preparations in accordance with its mandate, request, in writing, for such information and documents from a county public officer as it may consider necessary.	It is the Committee, not the Governor-elect, that shall request for the information as it is one of their roles to co-ordinate the briefings of the relevant county public officers.
15(1)	The swearing-in of the County Governor-elect shall be conducted in a public ceremony before the resident High Court	Amend to read:	The swearing-in ceremony should be presided over by a Judge of the High Court in all the Counties for

	Judge, or, in the absence of the resident High Court Judge, the resident Chief Magistrate.	<i>The swearing-in of the County Governor-elect shall be conducted in a public ceremony before a High Court Judge.</i>	uniformity and also because of seniority. The Bill should also not limit the judges to those residing in the particular County as some Counties do not have High Courts. As seen in the previous swearing-in ceremonies, most judges came from different Counties based on the appointment by the Chief Justice.
15(2)	The County Governor-elect shall be sworn-in on the first Tuesday following the twenty-first day after the declaration of the result of the election of county governor.	Ensure that the timelines stipulated here provide that by the time the President-elect is being sworn in, all the Governors have been sworn in.	This is to allow the Governor-elect to assume office as soon as possible and be duly sworn in by the time he or she is attending the swearing in of the President elect.
15	-	Add the following new clause: 15(3) The Committee shall publish, by notice in the gazette, the date, time and place for the conduct of the swearing-in ceremony.	It is important to inform the public where and when the swearing-in ceremony will take place since it is an official function.
16(1)	The County Governor-elect shall, during the swearing-in ceremony, take and subscribe to the oath or affirmation of office as prescribed in the Schedule.	Amend to read: 16 (1) The County Governor-elect shall, during the swearing-in ceremony, take and subscribe to the oath or affirmation of office as prescribed in the Schedule.	Typographical error

17(1)	<p>Upon signing the certificate of inauguration, the outgoing County Governor shall handover to the County Governor elect the following county symbols as a sign of transfer of executive power and authority —</p> <p>(a) the county flag; (b) the Constitution; and (c) the county public seal.</p>	<p>Amend to read:</p> <p>a) the constitution; b) the county flags; c) the county coat of arms; or d) the county public seal.</p>	<p>The outgoing County Governor should handover to the County Governor- elect any of the County symbols. Further, the Constitution should not replace any of the County symbols but can be one of the symbols handed over.</p>
17	-	<p>Insert the new clauses:</p> <p>(5) Where the outgoing Governor is not present during the inauguration the County symbols shall be handed over to the Governor-elect by the presiding Judge.</p> <p>(6) Where the outgoing Governor is re-elected for a second term and upon the signing of the certificate of inauguration, the presiding Judge shall hand over to the Governor any of the County symbols.</p>	<p>On hand-over of the County symbols, the Bill should cater for the scenarios where the outgoing Governor fails to attend the ceremony or where the Governor-elect has been re-elected for a second term.</p>

22(1)	The Committee shall publish and publicize all important information within its mandate affecting the respective county.	Delete the provision	This section is rendered nugatory since it is already canvassed in section 21(4) of the Bill.
23(1)	<p>The Committee shall not comply with a request for information by an applicant where—</p> <p>(a) disclosure of such information would be prejudicial to the security arrangements in place</p> <p>for the assumption of office of county governor;</p> <p>(b) the disclosure of such information is undesirable in</p> <p>the public interest; or</p> <p>(c) the information requested is at a deliberative stage by the Committee.</p> <p>(2) The Committee may decline to submit information to applicant where—</p> <p>(a) the applicant has failed to satisfy confidentiality requirements to the committee; or</p> <p>(b) Payment of the prescribed fee has not been made.</p>	<p><i>Amalgamate 23(1) and 23(2) to read as follows:</i></p> <p><i>The Committee shall not comply with a request for information by the applicant where-</i></p> <p><i>(a) disclosure of such information would be prejudicial to the security arrangements in place for the assumption of office of the County Governor;</i></p> <p><i>(b) the disclosure of such information is undesirable in the public interest;</i></p> <p><i>(c) the information requested is at a deliberative stage by the committee;</i></p> <p><i>(d) the applicant has failed to satisfy confidentiality requirements to the committee; or</i></p> <p><i>(e) payment of the prescribed fees has not been made.</i></p>	This is for clarity since both of the provisions were addressing the same thing.
	Funding	Include a new section as follows:	The Bill had omitted the issue of the funds for the operations of the

		<p>24. Funding The respective County Governments shall meet all the costs of the swearing-in ceremony, sitting allowances and other operational costs of their respective committee.</p>	<p>Committee. This should be clearly elaborated.</p>
	Succession generally	<p>Include a new section as follows: The day-to-day functioning of the County Government before and during the assumption of office by the Governor-elect shall be subject to the Constitution and other existing laws regarding transition and succession of institutions, offices, assets and liabilities.</p>	<p>This provision is important. There should be no vacuum in service delivery and the operations of the County just because of the swearing-in ceremony and other related events.</p>
	Schedules		<p>The Bill should include Schedules with the formats of the items proposed in Section 6(d).</p>

B. Further Comments:

The Bill has included the clauses on: inability of the Governor or Deputy-Governor to assume office; assumption of office of Governor by Deputy-Governor; vacancy in the office of the Deputy-Governor; and appointment of deputy county governor where deputy-governor assumes office of County Governor. These same clauses have been proposed in the County Governments (Amendment) Bill, 2017. The Council opines as follows on this matter:

- ✓ That the Assumption of Office of the County Governor should limit itself to the procedure and ceremony of the assumption of office of the Governor-elect. The Senate Committee should mirror the Bill to the Assumption of Office of President Act, 2012, which is the national legislation on assumption of office.
- ✓ Any legislative proposals on the filling of vacancies of the deputy-governor and inability to assume office should be addressed in the County Governments (Amendment) Bill, 2017.

C. Recommendations:

The Senate Committee on Devolution and Intergovernmental Relations should review the Bill and consider the Council's proposals.



536



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

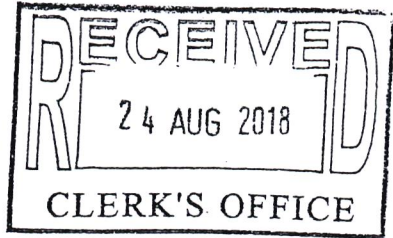
①
Mwambere
Jw. Othman &
Mwambere &
Admin & Security
27/8/18

AG/LDD/589/1/60

22nd August, 2018

Clerk of the National Assembly,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

Attention: Mr. Jeremiah Ndombi



② Aden Keenan
Foramindeant
Committee
27/8/18

RE: THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE
BILL NO. 11 OF 2017)

Reference is made to your letter Ref No. NA/DC/ANS/2018/95 dated
the 3rd August, 2018 on the above subject matter.

We have comprehensively reviewed the proposed Bill and our
comments are as follows:

Clause 2

Clause 2 of the Bill proposes to amend section 123 of the County
Governments Act, 2012 in order to provide for the procedure for
suspending a county government and also elaborate on the process of
terminating a suspension by the Senate. However, the proposed Bill does
not provide for the subsequent action to be taken by either the Senate
or the President where the Commission of Inquiry does not recommend
for suspension of a county government or in circumstances where the
President does not concur with the recommendations of the Commission
pursuant to the provisions of the proposed subclause (8) of clause 123.

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info@lawoffices@kenya.go.ke WEBSITE: www.attorney-general.go.ke
DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



Subclause (14) of the Bill should be deleted since it purports to permit the Senate to make recommendations or determination on other matters which are not related to the suspension of a county government. The section should deal with matters on suspension of a county government exclusively.

Clause 3

Clause 3 of the Bill proposes to amend section 129 of the County Governments Act, 2012. The new insertions in the section clarify the procedure for the termination of suspension by the Senate including the dissolution of the Interim County Management Board appointed pursuant to section 126 of the County Governments Act and the continuation in office of the incumbent State Officers of the relevant County Government.

Nonetheless, clause 3 of the Bill should be amended by renumbering the last provision proposed under clause 129 as subclause (8) instead of subclause (4).

LM
L. M. Murila,
Chief State Counsel.
For: ATTORNEY-GENERAL

② Anep
pls deep
AA
13/8/18

REPUBLIC OF KENYA



0 D/ans.
10/8/18

MINISTRY OF DEVOLUTION AND ASAL
STATE DEPARTMENT OF DEVOLUTION
Office of the Principal Secretary

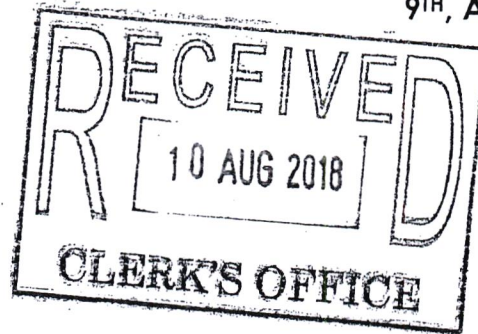
Fax No.: 2217869 Telephone: 2215245
Direct line: 020 343303
Web: www.devolutionandplanning.go.ke
Email: psdevolution@devolutionplanning.go.ke

P.O. Box 30004-00100
NAIROBI
KENYA

Ref: MDP/DD/LG/39

9TH, August, 2018

The Clerk of National Assembly
P.O BOX 41842-0010
NAIROBI



Attn: Mr. Jeremiah Ndombi

**RE: MEETING WITH DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY ON THE
ASSUPMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL
(SENATE BILL NO.1 OF 2018) AND THE COUNTY
GOVERNMENTS(AMENDMENT)BILL(NO 2 OF 2017)**

Reference is made to your letter Ref: NA/DC/ANS/2018/94 dated 3rd August 2018, which we wish to respond as hereunder:

ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL,2018

The Assumption of office of the County Governor Bill 2018 seeks to provide for the procedure for the Assumption of the office of Governor by the Governor elect and for connected purposes, which was previously non-existent.

We however recommend changes to the Bill as follows:

- i) With regard to clause 12, we recommend a standard certificate of inauguration to be prescribed in the schedule for purposes of uniformity.
- ii) With regard to clause 24, we are of the view that making of regulations for the better carrying into effect of the provision of the Act is a policy issue and the mandate should be given to the Cabinet Secretary, Ministry of Devolution and ASAL to make standard regulations that will apply to counties.

THE COUNTY GOVERNMENTS AMENDMENT (NO.2) BILL,2017

The County Governments (Amendment) NO 2 Bill, 2017 is a Bill for an Act of Parliament to amend the County Governments Act to provide for the procedure for the disposal of a report of Commission of Inquiry established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the constitution, and connected purposes.

The Bill seeks to address the inadequacy of the existing laws. We have reviewed the Bill and wish to make the following recommendations:

- i. Under clause 2 (7) we recommend a provision of extension of time line where the Commission fails to conclude an inquiry on suspension of a County Government within 3 months.
- ii. Under clause 2(13) we recommend a timeline of 7 days between the time the Senate authorizes suspension of a county government and when the President suspends the county government by a gazette notice.
- iii. under clause 3(129) (4) we are of the view that the 10 days period for the select committee to make a report to the Senate on their findings on lifting suspension of a county government is too short, considering it has to conduct a public participation that includes receiving oral and written submission. We therefore recommend a timeline of 21 days.
- iv. There is a numbering error. Clause 3(129) (4) is repeated.



Charles T. Sunkuli, CBS
PRINCIPAL SECRETARY